BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
DAVID E. BRIGHT AND DOLLY D. BRIGHT)

Appearances:

For Appellants: James J. Arditto, Attorney at Law

For Respondent: John S. Warren, Associate Tax Counsel

OPINION

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of David E. Bright and Dolly D. Bright to proposed assessments of additional personal income tax for the years 1948, 1949, 1950 and 1951 against David E. Bright in the amounts of $17,257.72, $14,315.81, $73,958.44 and $1,590.46, respectively, and against Dolly D. Bright in the amounts of $468.12, $1,249.61, $1,009.56 and $1,810.33, respectively.

The only issue involved is whether the Appellants were residents of California during the period July 1, 1948, through July 1, 1951. Originally the period from July 1, 1951 to December 31, 1951, was also contested but Appellants have conceded that they were residents of California on and after July 1, 1951.

Prior to 1948, David E. Bright lived in Illinois with his former wife, Ruth. They encountered marital difficulties and in 1947 Mr. Bright decided to obtain a divorce in Nevada. In December, 1947, he purchased a house in Las Vegas for $16,500. This was at the time one of the best homes available there and was located in one of the finest residential areas. He remodeled and furnished this house and moved into it early in 1948. He obtained a divorce decree in Nevada in April of that year. Ruth Bright commenced litigation in the Illinois courts, contending that the Nevada decree was invalid because Mr. Bright was not a Nevada resident. This litigation was not terminated until December of 1951. At that time an agreement between David and Ruth Bright was approved by the Nevada court.

In June, 1948, Mr. Bright married Appellant Dolly D. Bright, a native of Los Angeles, California, who had resided in Illinois for some years immediately before the marriage. In July, 1948, he purchased a furnished house in Los Angeles for $52,500. In June of 1950, he purchased another house in Los Angeles for $54,000. This house was remodeled and refurnished at a cost of $125,000. The work was not completed until July, 1951. On that date Appellants admittedly moved into the latter house and have since lived there. The first Los Angeles house was ultimately sold at a price of $49,000. The house in Las Vegas was also eventually sold.

Appellants employed a maid in Nevada during part of the period involved in this appeal, They had no maid in California. They did, however, allow a university student to live in the original Los Angeles house from March, 1949, to November, 1950, in return for his acting as a caretaker for that period.

Mr. Bright had a major interest in Whitney Industries, which was first a corporation and later a partnershin. In 1948 this company acquired steel manufacturing plants in Indiana and Pennsylvania. Mr. Bright was active in contacting prospective steel customers in various parts of the country. He also had a substantial interest in Pioneer Gen-E-Motors an Illinois corporation engaged in the sale of lawn mowers and electric motors. In order to carry on his business activities he maintained an office and a secretary in Las Vegas and had in that city bank accounts under the names of Whitney Industries and Pioneer Gen-E-Motors as well as his own personal account. He had a relatively small investment in California oil property which proved unprofitable and owned 15 acres of vacant land here. He had no office or bank accounts *in* California and contacted no customers here.

In Las Vegas, Mr. Bright was a member of B'nai Brith, the Jewish Community Center and the Chamber of Commerce. There he participated in and contributed to the United Jewish Appeal and the Community Chest. He held a nonresident membership in the Beverly Club in Beverly Hills, California, and in the Friar's Club in Los Angeles. Both Appellants were registered to vote in Nevada and Mr. Bright did vote there in 1948 and 1950. Their cars were registered there and they paid personal property taxes there.

The exact number of days that Appellants were in California is not clear but it is apparent that they were here on a considerable number of occasions. Mrs. Bright became pregnant in 1948 and admittedly stayed for two or three months at the house which was first purchased in Los Angeles in order to be in constant contact with her physician. This child was lost in the fall of 1948. She again became pregnand in 1949 and stayed at the same Los Angeles house for two or three months prior to the birth of Appellants' daughter in August of 1949. The child was seriously ill after her birth and Mrs. Bright remained here with the child for an additional three months.

She also did a great deal of shopping here at other times. Mr. Bright was admittedly in California for vacations in Palm Springs, an operation in Los Angeles, visits to his wife while she was here in connection with her pregnancies, shopping trips and in connection with business trips to the east which he made from the Los Angeles airport.

Section 17013 of the Revenue and Taxation Code (now Section 17014) provided in part:

> "'Resident' includes:
> (a) Every individual who is in this State for other than a temporary or transitory purpose.
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> ***"

Regulation 17013-17015(b), Title 18, California Administrative Code, discusses the meaning of "temporary or transitory purpose" and states in part that "The underlying theory of Sections 17013-17015 is that the state with which a person has the closest connection during the taxable year is the state of his residence."

Section 17015 (now Section 17016) provided:

> "Every individual who spends in the aggregate more than nine months of the taxable year within this State or maintains a permanent place of abode within this State shall be presumed to be a resident. The presumption may be overcome by satisfactory evidence that the individual is in the State for a temporary or transitory purpose."

Stats. 1951, p. 440, in effect May 1, 1951, deleted from this section the words "or maintains a permanent place of abode within this State."

Regulation 17013-17015(f) provides:

> "Proof of nonresidence - (1) The type and amount of proof that will be required in all cases to rebut or overcome a presumption of residence and to establish that an individual is a nonresident cannot be specified by a general regulation, but will depend largely on the circumstances of each particular case.
>
> Ordinarily, however, affidavits or testimony of an individual and of his friends,

> employer, or business associates that the individual was in California for a rest or vacation or to complete a particular business transaction, or to work for a limited period of time will be sufficient to overcome any presumption of residence here. In the case of individuals who claim to be nonresidents by virtue of being in some other State or country for other than temporary or transitory purposes, affidavits of friends and business associates as to the reason for being in such other State or country should be submitted."

Appellants contend that during the period in question they were never in California for other than temporary or transitory purposes. They have submitted detailed affidavits of neighbors and business associates in Las Vegas, all to the effect that Appellants lived in Las Vegas and were absent only for temporary purposes. They have also submitted to the same effect affidavits of Dolly Bright's mother, who lived in Los Angeles, and of the student who stayed at their Los Angeles house. At the oral hearing, Mr. Bright and the student, Frank J. Scharrer, testified in support of this position.

With respect to the houses purchased in Los Angeles, Appellants maintain that the first house was purchased because it was necessary to provide a place for Mrs. Bright to stay during her pregnancies and it was extremely difficult at the time to rent a satisfactory place. They state that it was contemplated that the house could later be sold at the approximate purchase price, which proved to be true, and that, in any event, they did intend to reside in Los Angeles after the litigation with the former Mrs. Bright was terminated. They allege that the second house was not ready for occupancy until they moved into it in July, 1951. Mr. Bright testified in support of these points.

The Franchise Tax Board has constructed a schedule of time spent by Appellants in California and elsewhere on the basis of such items as gasoline purchases charged to Mr. Bright's account, charges at a California club to which he belonged, charges at California stores and purchases of airplane tickets. According to this schedule, Appellants spent substantially more time in California than in Nevada during each of the years involved. This schedule conflicts at many points with Appellants* estimates of periods spent in Nevada.

The schedule may not be lightly disregarded. Neverthe-' less, it is, as the Franchise Tax Board has acknowledged, not infallible. The statements by Appellants as to the periods spent here and in Nevada were only estimates made several years after the fact. Errors in these estimates of a few days one way or the other could be established without necessarily refuting the aggregate time claimed to have been spent here. For example, Appellants' recollection may be that they were in California for a particular week although it may instead have been the following week. The schedule would accept their recollection for the first week and would also allocate the following week to California on the basis of purchases made here.

In addition, the schedule allocates as "unknown" much of the time during which there were no charges or other objective evidence to establish presence in any particular place. Yet this could well represent time spent at home in Las Vegas where charges for such items as gasoline and dining at clubs would be less likely than during excursions in California. Possible error in the schedule also exists in that it allocates to California all of the time between any two California charges which were separated by five days or less.

Balanced against the schedule are the affidavits and testimony previously referred to of persons who were actual observers of Appellants' actions. These indicate that Appellants spent much time in Las Vegas and were in California for temporary or transitory purposes. The fact that Appellant found it necessary to have a caretaker at the Los Angeles house tends to show that they were not in California for extended periods. We believe that although they were frequently in California for brief intervals, they were in Las Vegas much more than the Franchise Tax Board has estimated.

Nor is the time spent in California the only factor to be considered. Aside from the time factor, the evidence indicates preponderantly that Appellants were more closely connected with Las Vegas than with Los Angeles. Mr. Bright conducted his business affairs *in* Las Vegas where he had his only office and secretary. He belonged to more organizations in Las Vegas and was more active there in community affairs. The litigation with his former wife, in which she contended that his divorce was invalid because he was not a Nevada resident, placed him under constraint to maintain his residence there. This fact in itself adds considerable weight to Appellants' claim that they were Nevada residents.

The Franchise Tax Board has argued that Appellants must be presumed to be California residents in accordance with Section 17015 (supra) because they maintained a permanent place of abode here. The Appellants, on the other hand, take the position that they did not have a permanent place of abode here, and also that the presumption was lost for all years when it was repealed in 1951.

It is unnecessary to decide these points since, in our opinion, the evidence submitted is sufficient to overcome any presumption of California residence that may exist. We conclude that Appellants were residents of Nevada and were in California only for temporary or transitory purposes.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in these proceedings, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of David E. Bright and Dolly D. Bright to proposed assessments of additional personal income tax for the years 1948, 1949, 1950 and 1951 against David E. Bright in the amounts of $17,257.72, $14,315.81, $73,958.44 and $1,590.46, respectively, and against Dolly D. Bright in the amounts of $468.12, $1,249.61, $1,009.56 and $1,810.33 respectively, be and the same is hereby modified as follows: 'The action of the Franchise Tax Board with respect to that portion of the assessments attributable to the period on and after July 1, 1951, is hereby sustained; in all other respects the action is reversed.

Done at Sacramento, California, this 22nd day of July, 1958, by the State Board of Equalization.

Geo. R. Reilly, Chairman

J. H. Quinn, Member

Robert E. McDavid, Member

Paul R. Leake, Member

________________, Member

ATTEST: Dixwell L. Pierce, Secretary